

# EXHIBIT 1

**NOTICE OF COLLECTIVE ACTION SETTLEMENT**  
**FOR [FIRST NAME, LAST NAME]**

*Kelly, et al. v. DSV Air & Sea, Inc.*

Case No.: 2:20-cv-01204-CCC-ESK (U.S. District Court of New Jersey)

**YOU ARE NOT BEING SUED.**

**PLEASE READ THIS TIME-SENSITIVE NOTICE CAREFULLY.**

**If you were (1) employed by DSV Air & Sea, Inc. as an Ocean Import Agent, Ocean Export Agent, Air Import Agent, Air Export Agent, Freight Forwarder, and Customer Service Agent during the period of June 1, 2017 through May 17, 2020; or (2) you have previously filed a consent to join the above-referenced litigation, you may be entitled to receive money from the collective action settlement described below (“Collective Class Member” or “Collective Class Members”).**

The Parties have reached a settlement in a collective action lawsuit asserted against DSV Air & Sea, Inc. (“DSV”), styled *Kelly, et al. v. DSV Air & Sea, Inc.*, Case No. 2:20-cv-01204-CCC-ESK, pending in the United States District Court for the District of New Jersey (“*Kelly* Action”). You are receiving this Notice because DSV’s records reflect that you are eligible to participate in the Settlement. Please read this Notice carefully. It contains important information about your rights concerning the Settlement described below.

As described more fully below, to participate in the Settlement, you must send a properly completed and executed Consent, Claim Form, and Release (“Claim Form”) to [REDACTED] (“Claims Administrator”) that should be post-marked by [REDACTED], 2021, but no later than [REDACTED], 2021. If you fail to submit a timely Claim Form, you will receive no money from the Settlement, but you will not release any claims you may have against DSV.

This Notice explains the *Kelly* Action, the terms of the Settlement, and rights and obligations. The Settlement is subject to Court approval, as explained herein.

**1. What is the Purpose of this Notice?**

The purpose of this Notice is to let you know that there is a collective action lawsuit pending in the U.S. District Court for the District of New Jersey, and that you may be entitled to a payment as part of the settlement of this action.

On February 4, 2020, Plaintiffs Rachel Kelly and Toni Boardman filed a lawsuit against DSV in the U.S. District Court for the District of New Jersey, Case No. 2:20-cv-01204-CCC-ESK, seeking unpaid wages under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, as a collective action. Rachel Kelly and Toni Boardman are known as “Named Plaintiffs.” Together, the Named Plaintiffs and Defendant are known as “the Parties.”

This lawsuit alleges that during the time period alleged, DSV failed to pay Plaintiffs and other similarly situated persons overtime pay for all time worked in excess of 40 hours per week in violation of the FLSA.

On September 25, 2020, after good-faith, arms-length negotiations presided over by an experienced and well-respected mediator, the Parties reached an agreement to settle this lawsuit which has been memorialized in a Settlement and Release Agreement (“Settlement” or “Settlement Agreement”).

**[LAST NAME, FIRST NAME]**

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended to or will be construed as an admission by DSV that Plaintiffs' claims in this lawsuit have merit or that it has any liability to Plaintiffs or Collective Class Members on those claims.

Plaintiffs, DSV, and their respective counsel have concluded that the Settlement is advantageous considering the risks and uncertainties to each side of continued litigation. The Parties and their counsel have determined that the Settlement is fair and reasonable. The Court preliminarily approved the Settlement as fair and reasonable, but will evaluate the Settlement for final approval as described in Paragraph 11.

## **2. Why Did I Receive this Notice?**

You received this notice because DSV's records identify you as a potential Collective Class Member. You may submit the enclosed Claim Form to get your share of the Settlement. The Court has certified, for settlement purposes only, the following class:

**SETTLEMENT CLASS:** The Settlement Collective Class consists of all individuals who timely return a valid Claim Form and who worked for any of the Defendants (1) as Ocean Import Agents, Ocean Export Agents, Air Import Agents, Air Export Agents, Freight Forwarders, and Customer Service Agents employed by Defendant during the period of June 1, 2017 through May 17, 2020; (2) previously filed a consent to opt-in to this lawsuit; or (3) are otherwise identified as a Class Member as defined by the Settlement Agreement.

## **3. What are My Options?**

You have two options with regards to this Settlement. You can:

- 1) Participate in the Settlement by filing a timely and otherwise valid Claim Form; or
- 2) Do nothing in which case you will not participate in the Settlement and preserve all rights.

**You must complete a valid Claim Form to participate in the Settlement and receive your share of the Settlement.**

Details about how each option would affect your rights are explained below.

## **4. What are the Terms of the Proposed Settlement?**

### **A. Gross Settlement Amount**

The Court has approved DSV to establish a settlement fund in the amount of Two Million Dollars and No Cents (\$2,000,000.00) for the Settlement Collective Class ("Maximum Settlement Amount"). The Settlement fund will cover all alleged overtime compensation as well as liquidated/statutory damages, attorneys' fees, service awards, and costs. The Net Settlement Fund, which will be eligible for distribution among the Settlement Collective Class, will be calculated after Court-approved deductions are made from the Maximum Settlement Amount for fair and reasonable attorneys' fees and costs, costs of the settlement administration, and service awards to Plaintiffs Kelly and Boardman.

### **B. Attorneys' Fees & Costs**

Plaintiffs' Counsel will seek approval from the court for payment of their attorneys' fees from the Maximum Settlement Amount in an amount of \$500,000, plus litigation costs from a separate

[LAST NAME, FIRST NAME]

allocation of no more than \$15,000.00 to cover Plaintiffs' Counsel costs. Attorneys' fees and costs will be deducted from the Maximum Settlement Amount.

**C. Claims Administration Costs & Expenses**

The costs of administering the Settlement will be deducted from the Settlement and are subject to Court approval. The claims administration expenses shall not exceed \$20,000.

**D. Named Plaintiff Service Awards**

Plaintiffs will seek approval from the Court of a Named Plaintiff service payment to Kelly and Boardman in the amount of \$5,000.00 each for their work as Named Plaintiffs; specifically, for initiating this lawsuit, their work performed in furtherance of the lawsuit, and representing Collective Class Members. This Service Award, as described in the Settlement and Release Agreement, will be deducted from the Maximum Settlement Amount.

**5. How Much Will I Receive from the Settlement and What is the Method For Calculating Settlement Payments?**

DSV will make Settlement payments from the Net Settlement Amount to each Collective Class Member who returns the enclosed Claim Form signed, dated, and postmarked within specified timeframes. If a Collective Class Member returns her or his Claim Form by [REDACTED], 2021, she or he shall receive their allocated share of the Net Settlement Fund. The allocation shall be based on each Collective Class Member's number of eligible pay periods worked during the Class Period (June 1, 2017 through May 17, 2020), each Collective Class Member's pay rate, and a uniform assumption for overtime hours. Each Collective Class Member who submits her or his Claim Form by [REDACTED], 2021 shall be entitled to their pro-rata share of the Net Settlement Fund or a minimum payment of \$25.00. These Settlement payments shall be referred to herein as "Round 1 Payments."

Based on the formula described above your pre-taxed Round 1 Settlement Payment is:

[\$ENTER AMOUNT]

Collective Class Members who do not submit their Claim Form by [REDACTED], 2021, but who do submit a Claim Form within fifty-five (55) days after Round 1 checks are mailed will be entitled to receive their pro-rata share of the Net Settlement Fund or a minimum payment of \$25.00. These Settlement payments shall be referred to herein as "Late Claims."

Collective Class Members who timely filed their Claim Form by [REDACTED], 2021 and received a "Round 1 Payment" may be entitled to a supplemental payment representing their pro rata allocation of the difference between: (1) the Net Settlement Fund, and (2) the Round 1 Payments plus the amounts attributable to Late Claims. The supplemental payment shall be referred to herein as the "Round 2 Payments." In other words, if a Collective Class Member returns a timely Claim Form, they may be entitled to two payments. The amount of each person's Round 2 Payment is unknown at this time.

**Settlement payments to Collective Class Members for tax purposes will be treated as follows:** 50% of the payment to each Collective Class Member shall constitute wages from which the employer's and employee's payroll taxes shall be withheld and reported on an IRS Form W-2. The remaining 50% of the Settlement payment to each Collective Class Member shall constitute liquidated damages reported on IRS 1099 Forms. This tax treatment applies to both Round 1 and Round 2 checks.

[LAST NAME, FIRST NAME]

#### **6. When Will the Round 1 and Round 2 Payments be Made?**

The Round 1 Payments will be mailed by the Claims Administrator 45 days after the Court's final approval of the Settlement.

Payments for Late Claims and the Round 2 payments will be mailed by the Claims Administrator within 60 days from the mailing of the Round 1 Payments.

#### **7. Who Represents the Parties?**

##### **For Plaintiffs and Collective Class Members ("Plaintiffs' Counsel"):**

Reena I. Desai  
NICHOLS KASTER, PLLP  
4700 IDS Center  
80 South Eighth Street  
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##### **For Defendant DSV ("Defense Counsel"):**

Kathleen McLeod Caminiti  
FISHER & PHILLIPS LLP  
430 Mountain Avenue, Suite 303  
Murray Hill, NJ 07974  
Telephone: (908) 516-1050  
Facsimile: (908) 516-1051  
Email: [kcaminiti@fisherphillips.com](mailto:kcaminiti@fisherphillips.com)

#### **8. How Can I Participate in the Settlement?**

If you are an eligible Collective Class Member and return the enclosed Claim Form by [REDACTED], you will receive a Round 1 Payment, as set forth above. If you do not return the Claim Form by [REDACTED], you may be entitled to participate by filing a Late Claim (described above). A copy of the Claim Form is enclosed with this Notice.

If you return the enclosed Claim Form and/or a Late Claim, you will receive a Round 2 Payment.

**[LAST NAME, FIRST NAME]**

You should be aware that Fair Labor Standards Act claims are limited to a two- or three-year statute of limitations, and delay in joining this case, or proceeding separately, may result in some or all of your claims expiring as a matter of law. If you pursue your claims elsewhere, you may be awarded a lesser amount than your award in this settlement, a greater amount than your award, or \$0.00.

#### **9. No Retaliation**

Whether you are a current or former employee of DSV, your decision as to whether or not to submit a Claim Form, or to reject the Settlement, will in no way affect your employment with DSV. DSV is prohibited by law from taking any action against persons who join the *Kelly* Action or participate in the Settlement because of their decision to join or not join.

#### **10. What Claims Will I Release if I Participate in the Settlement?**

By signing the Claim Form and/or negotiating the settlement payment check, each Participating Collective Class Member and each of his or her respective past, present, and future attorneys, agents, successors, heirs, assigns, guardians, executors, administrators, and representatives releases and fully discharges Defendant and the Released Entities from all claims made against Defendant and its affiliates and related companies in the Complaint in the Litigation, and all claims arising out of or relating to the claims asserted in the Litigation, whether known or unknown, accrued through May 17, 2020, including but not limited to any and all minimum wage and overtime under the FLSA; any and all corresponding claims arising out of any state or local wage laws; any and all corresponding wage and hour minimum wage or overtime laws; and any corresponding contractual, common law or equitable claims against Defendant, its affiliates and related companies, and any right to arbitrate said claims, accrued through May 17, 2020. If the Settlement does not become final for any reason, the *Kelly* Action will continue.

#### **11. When Will the Court Decide Whether to Approve the Settlement?**

On or before May 21, 2021, Plaintiffs will file a motion with the court asking for it to grant final approval of the Settlement. The Court will determine whether to approve this Settlement. In order to do so, the Court will conduct a Final Approval Hearing. The hearing will be held on June 10, 2021 at 10:30 a.m. EST before the Honorable Judge Claire C. Cecchi, U.S. District Court Judge, at the United States Courthouse located at 50 Walnut Street, Newark, New Jersey, or may alternatively be held by telephone or videoconference due to COVID-19 safety precautions. Although you may attend this hearing, you do *not* need to attend this hearing in order to participate in the Settlement.

Any hearing regarding the Settlement may be adjourned by the Court without further written notice to Collective Class Members. Unless the Court orders otherwise, any Collective Class Member who does not object to the settlement will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement.

The Court may approve the Settlement and/or any other related matter at or after the Final Approval Hearing without further notice to Collective Class Members.

If the Settlement does not become final for any reason, the *Kelly* Action will continue, and no settlement payments will be made.

[LAST NAME, FIRST NAME]

**12. Additional Important Information**

It is your responsibility to ensure that the Claims Administrator has received your timely Claim Form. You may contact the Claims Administrator at [REDACTED] to confirm it has been timely received. It also is your responsibility to keep a current address on file with the Claims Administrator to ensure that you receive your Settlement Payment should the Court order final approval of the Settlement. You may also update your address online at [www.\[REDACTED\]](http://www.[REDACTED]).

**13. What If I Have Any Questions?**

This Notice only summarizes the *Kelly* Action, the settlement, and their related matters. For more information about the settlement or if you have any questions regarding the settlement, you may contact Plaintiffs' Counsel as identified in Paragraph 7 or the Claims Administrator, identified above.

**DO NOT CONTACT THE COURT ABOUT THIS MATTER.**

Dated: